

Presentment Date and Time: November 17, 2008 at 12:00 P.M. (EST)

Objection Deadline: November 17, 2008 at 11:30 A.M. (EST)

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re

LEHMAN BROTHERS HOLDINGS INC, et al.,

Debtors.

)
) **Chapter 11 Case No.**
)
) **08-13555 (JMP)**
)
) **Jointly Administered**
)
)
)

**NOTICE OF PRESENTMENT OF ORDER
AUTHORIZING FILING OF DOCUMENTS UNDER SEAL**

PLEASE TAKE NOTICE that upon the annexed motion of ING Real Estate Finance (USA) LLC, the undersigned will present the attached proposed order to the Honorable James M. Peck, United States Bankruptcy Judge, for signature on **November 17, 2008 at 12:00 noon.**

PLEASE TAKE FURTHER NOTICE that objections, if any, to the proposed order must be made in writing and received in the Bankruptcy Judge's chambers and by the undersigned not later than **11:30 a.m. on November 17, 2008.** Unless objections are received by that time, the order may be signed.

Dated: New York, New York
October 21, 2008

MORRISON & FOERSTER LLP

By: /s/ Lorenzo Marinuzzi
Lorenzo Marinuzzi
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*Attorneys for ING Real Estate
Finance (USA) LLC*

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**MOTION FOR ORDER PURSUANT TO BANKRUPTCY CODE
SECTION 107(C) AND BANKRUPTCY RULE 9018 AUTHORIZING THE
FILING UNDER SEAL OF CERTAIN EXHIBITS TO ING REAL ESTATE
FINANCE (USA) LLC'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

TO: HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE

ING Real Estate Finance (USA) LLC ("ING"), by and through its undersigned counsel, hereby files this motion (the "Seal Motion") pursuant to Section 107(c) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for entry of an order, substantially in the form annexed hereto as Exhibit A, authorizing ING to file under seal certain Exhibits (the "Exhibits") to its Motion for Relief from the Automatic Stay in the above-caption cases, dated October 21, 2008. In support of the Seal Motion, ING respectfully represents as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § § 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED AND REASONS THEREFOR

2. By the Seal Motion, ING seeks to protect confidential agreements and requests that this Court enter an order pursuant to section 107(c) of the Bankruptcy Code and Bankruptcy Rule 9018 authorizing it to file under seal the Exhibits to its October 21, 2008 motion for relief from the automatic stay in the above-referenced matter.

3. These Exhibits include (i) a Master Credit Agreement between Lehman Brothers Holdings, Inc. (“LBHI”) and Park Avenue Hotel Acquisition LLC (the “Borrower”), effective as of April 17, 2007; (ii) a Building Loan Agreement and a Project Loan Agreement between LBHI and the Borrower, effective as of April 17, 2007; (iii) an Assignment and Assumption Agreement between LBHI and ING, effective as of August 1, 2007; and (iv) a Co-Lending Agreement between LBHI and ING, effective as of August 1, 2007. The information contained in the Exhibits is highly confidential and proprietary.

4. Section 107(c) of the Bankruptcy Code provides bankruptcy courts with the power to issue orders protecting entities from potential harm resulting from the disclosure of certain confidential information. This section provides, in relevant part, that:

On request of a party in interest, the bankruptcy court shall. . . – (1)
protect an entity with respect to a trade secret or confidential
research, development, or commercial information. . . .

5. Bankruptcy Rule 9018 defines the procedure by which a party may move for relief under section 107, and provides that “[o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires to protect the estate or any entity in

respect of a trade secret or other confidential research, development, or commercial information...” Fed. R. Bank. P. 9018.

6. “If the information fits any of the specified categories, the court is required to protect a requesting interested party and has no discretion to deny the application.” *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. N.Y. 1994) (emphasis in original) (granting application to seal certain confidential information; “[c]ommercial information has been defined as information which would cause ‘an unfair advantage to competitors by providing them information as to [] commercial operations’”); see also *In re Global Crossing, Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) (holding that the purpose behind Section 107 and Bankruptcy Rule 9018 is to protect “business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury”).

7. Section 107(c) of the Bankruptcy Code requires that the moving party show cause to move the court to protect the information. ING submits that good cause exists for the Court to grant the relief requested herein.

8. The Exhibits reflect confidential commercial and proprietary information of third parties, and, therefore, should be shielded from disclosure to protect against commercial injury. If the terms of ING’s agreements became public, the potential damage would be significant. If any competitor were able to gain access to the agreements, the value of that confidential commercial information such as the pricing for and the structure of the transactions would diminish. Disclosure would also put ING at a substantial commercial and competitive disadvantage in the future when negotiating similar agreements. Moreover, the agreements also reflect confidential information relating to the counterparties to the agreements.

9. Therefore, ING respectfully moves the court for an order authorizing the filing under seal of all Exhibits to the motion for relief from the automatic stay in the above-referenced matter, dated October 22, 2008.

WAIVER OF MEMORANDUM OF LAW

10. This Motion does not raise any novel issues of law and is otherwise supported by citations to authority. Accordingly, ING respectfully requests that the Court waive the requirement in Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York that a separate memorandum of law be submitted.

NOTICE

11. Notice of this Motion will be provided by counsel to ING to (i) counsel to the Debtors, (ii) the Office of the United States Trustee for the Southern District of New York, (iii) counsel to the Official Committee of Unsecured Creditors, and (iv) all other parties requesting notice under Bankruptcy Rule 2002. In light of the nature of the relief requested herein, ING submits that no other or further notice need be given and that the notice provided by ING is sufficient.

12. No previous request for the relief sought herein has been made by ING to this or any other Court.

WHEREFORE, ING respectfully requests entry of the attached order granting the relief requested herein and such other and further relief as may be just.

Dated: New York, New York
October 21, 2008

MORRISON & FOERSTER LLP

By: /s/ Lorenzo Marinuzzi
Lorenzo Marinuzzi
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*Attorneys for ING Real Estate
Finance (USA) LLC*

Exhibit A

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re

LEHMAN BROTHERS HOLDINGS INC, et al.,

Debtors.

Chapter 11 Case No.

08-13555 (JMP)

Jointly Administered

**ORDER AUTHORIZING ING REAL ESTATE
FINANCE (USA) LLC TO FILE EXHIBITS TO MOTION
FOR RELIEF FROM AUTOMATIC STAY UNDER SEAL PURSUANT
TO 11 U.S.C. § 107 AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 9018**

Upon the motion (the “Seal Motion”) of ING Real Estate Finance (USA) LLC (“ING”), for an order, pursuant to sections 107(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing it to file under seal exhibits (the “Exhibits”) to its motion for relief from the automatic stay in these chapter 11 cases; and the Court having jurisdiction to consider the Seal Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order of Referral of cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.); and consideration of the Seal Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper notice of the relief requested in the Seal Motion having been given; and the Court having determined that the legal and factual bases set forth in the Seal Motion establish cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED that the Seal Motion is granted as provided herein; and it is further

ORDERED that, pursuant to section 107(b) of the Bankruptcy Code and Rule 9018 of the Bankruptcy Rules, ING is authorized to file hard copies of the Exhibits under seal for *in camera* review; and it is further;

ORDERED that, pursuant to section 107(b) of the Bankruptcy Code, the Clerk of the Court is directed to file the Exhibits under seal in an envelope, clearly indicating that the Exhibits have been filed under seal by order of the United States Bankruptcy Court for the Southern District of New York and may not be unsealed unless and until permitted by further order of the Court; and it is further

ORDERED that the requirement pursuant to Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York that ING file a memorandum of law in support of the Seal Motion is hereby waived; and it is further

ORDERED that the Court retains jurisdiction to enforce this Order and the confidentiality of the Exhibits, including the authority to impose sanctions on any person or entity that violates this Order.

Dated: November __, 2008
New York, New York

UNITED STATES BANKRUPTCY JUDGE